IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 854 OF 2006
WITH
CIVIL APPLICATION NO. 149 OF 2007

Dodha Rajaram Hire and ors. ..Appellants

Vs.

Nimba Rajaram Hire and anr. ..Respondents

Mr. Niranjan P. Shimpi for appellants.
Mr. M.M. Sathaye for respondent no.1.

CORAM: B.H. MARLAPALLE, J.

Date : April 10, 2007.

P.C.:

1. Heard Mr. Shimpi the learned counsel for the appellants and Mr. Sathaye the learned counsel for the respondent no.1.

2. This second appeal arises from the decree of partition and separate possession passed by the learned 3rd Joint Civil Judge, Junior Division at Malegaon on 7/2/2003 in RCS No. 340 of 1983 and duly confirmed by the Lower Appellate Court in Civil Appeal No. 47 of 2003, which came to be dismissed on 3/7/3002. By the said common judgment dated 3/7/2003

the cross appeal filed by the plaintiff also came to be dismissed.

3. There is no dispute that plaintiff Nimba is the younger brother of Dodha and Dodha died during the pendency of the suit. The suit property is an agricultural land in Gat No. 1070 admeasuring 11 H 39 R and Gat No.811 admeasuring 82 R of village Nimgaon as well as land in Gat No. 323 admeasuring 2 H. 69 R and Gat No. 96 admeasruing 5 H. 61 R of village Gilane Taluka Malegaon. In addition, the suit property consisted of Grampanchayat House No. 394 at village Gilane. It was contended by the plaintiff that the defendant no.1 being the elder brother, who was managing the ancestral property as the Karta of the family after demise of their father Rajaram. At the same time, name of Dodha was recorded in record of right in respect of the suit property on behalf of the joint family. Due to differences between the wives, the brothers had separated about 20 years back, but the management of the joint family property is continued and more particularly the continuation of the agricultural land. Thus the brothers were

separated in mess but joint in property as a family arrangement and inspite of repeated demands the elder brother avoided to effect the partition. Consequently on 31/1/1983 the plaintiff issued notice to the defendants and demanded partition. In reply, it was stated that the land in Survey No.96/2 and 97/2 were given in the share of the plaintiff and he had already sold the land in Survey No.97/2 to defendant no.2. On the contrary, it was contended by the plaintiff in his suit that the agricultural land in Survey No.97/2 was the joint family property and it was sold by the Dodha to defendant no.2 without the consent of the plaintiff and Dodha received the total consideration. The Defendant No.1 resisted the suit by filing Written Statement at Exh.16 which has been adopted by his LRs who have brought on record by filing pursis at Exh.176. Now so far as the sale transaction of the land in Survey No.97/2 is concerned, it was contended that the same was not part of the suit property. It was pointed out that Survey No.96/2 was renumbered as Gat No.811.

4. The trial court, on assessment of the oral and

documentary evidence, recorded a finding that the defendants had proved that the land in Gat No.323 was a self acquired property of Dodha and, therefore, plaintiff Nimba could not claim any share therein, whereas the rest of the suit properties have been held to be the joint family properties and, therefore, the suit was decreed with 1/2 share to each of the brothers, except the land in Gat No.323 of village Gilane. The Lower Appellate Court has agreed with the findings recorded by the trial court.

5. In his oral evidence the plaintiff had admitted that Dodha was cultivating the land in Gat No.323 as a tenant and from the original record of Survey No.96, from which Gat No.323 was carved out, in the cultivation column Dodha’s name was appearing since 1957-58 (Exh.72). Similarly at Exh.70 there were other 7x12 extracts which were showing Dodha’s name in the cultivation column since 1966-67 onwards. From the challan at Exh.192 dated 23/4/1968 it was recorded that Dodha deposited an amount of Rs.1,460.50 as a purchase price of the land in Survey No.96 as per the provisions of the Bombay Tenancy and

Agricultural Lands Act, 1948 as per order of ALT, Malegaon. There was further evidence of Kautik Chindha and Trimbak Hire stating that the land in Gat No.323 was being cultivated by Dodha and in any case the plaintiff has not challenged the said finding in respect of Gat No.323 recorded in favour of the defendants.

6. So far as the other properties are concerned, the defendants could not bring on record any evidence to show that they were the self acquired properties of Dodha. The defendants had brought on record the alleged partition deed at Exh.208 and the witness, who was examined in support thereof i.e. Trimbak Ratan (D.W.4), it could not be held that it was a partition deed and the partition was only of four acres of land. In fact, the receipt at Exh.208 related to the transaction in repsect of the land sold to defendant no.2 from Survey No.97/2 and it was not a partition deed. On assessment of the evidence of Nimba (P.W.1), Samadhan Rathod (P.W.2), Kautik Chindha (P.W.3), Subhas (D.W.1), Trimbak Ratan (D.W.4), the trial court recorded a finding that all the suit properties,

except the land in Gat No.323 was a joint family property between the plaintiff and the original defendant -Dodha. The courts rejected the contentions that there was a partition by metes and bounds. These concurrent findings recorded by both the courts below are based on the documentary and oral evidence adduced by the parties and this fact finding exercised concurrently done does not involve any substantial question of law for the considerations of this court.

7. Hence, the second appeal is dismissed.

8. Civil Application No.149 of 2007 does not survive and the same shall stand disposed as such.

(B.H. Marlapalle,J.)